

LAW ADMISSIONS CONSULTATIVE COMMITTEE¹

REVIEW OF ACADEMIC REQUIREMENTS FOR ADMISSION TO THE LEGAL PROFESSION

At the request of the Council of Chief Justices, the Law Admissions Consultative Committee (LACC) proposes to conduct a limited review of the Academic Requirements for admission to the legal profession in Australia. LACC accordingly invites submissions, by 31 March 2015, responding to ten questions about the Academic Requirements, set out in item 6 below.

1. SOME CONTEXT

For some years, LACC has considered that it might be appropriate to undertake a limited review of the present 11 Academic Requirements, at an appropriate time.

In 1998, LACC asked all law schools, PLT providers, Admitting Authorities, the Law Council and each of its constituent bodies, whether the Academic Requirements should be reviewed and brought up-to-date. Not one respondent then thought a review was either necessary or desirable. Nearly all respondents also noted that the difficulty encountered initially in trying to reach agreement on the existing 11 Academic Requirements itself presented a reason for not seeking to re-open them.

That history, and the respective roles of LACC's predecessor, the Australian Legal Education Council and the McGarvie Report to the Victorian Council of Legal Education, in developing a consensus on the present 11 Academic Requirements is set out in a 2010 LACC Discussion Paper *Rethinking Academic Requirements for Admission*.²

Since 1998, however, the context has changed in several respects. In 2002, the first version of national *PLT Competency Standards for Entry-level Lawyers*³ was adopted. These achieved two things.

- (a) They made explicit the knowledge, skills and values that all entry-level lawyers are expected to acquire during the PLT stage of preparation for admission, thereby identifying possible areas of overlap with certain elements of the 11 Academic Requirements.
- (b) They were drafted in terms of general descriptions of the relevant knowledge, skills and values, and specified precise performance criteria required for each element of each description. They are thus expressed in a very different way from the 11 Academic Requirements

The *PLT Competency Standards* also reflect more general developments in both theory and practice in expressing the objects of legal education. The Discussion Paper *Rethinking Academic Requirements for Admission* reviewed those developments in the USA, England and Scotland prior to February 2010. At page 19, it summarised 15 criticisms that had then been expressed about the existing Academic Requirements or their mode of expression. At pages 24 and 25, it set out 16 matters which it encouraged Admitting Authorities and others to consider when determining future Academic Requirements for Admission.

¹ LACC's Charter is approved by the Council of Chief Justices which also appoints its Chairman. LACC is not, however, a Committee of the Council, nor does it act on the Council's behalf.

² LACC, *Rethinking Academic Requirements for Admission*, 26 February 2010.
<<http://www1.lawcouncil.asn.au/LACC/images/pdfs/Re-thinkingAcademicRequirementsforAdmission.pdf>>

³ A new version will apply from 1 January 2015. See
<<http://www1.lawcouncil.asn.au/LACC/images/pdfs/LACCCompetencyStandardsforEntryLevelLawyers-Jan2015.pdf>>.

A further contextual change arose from a joint request in 2007 from Chief Justice Warren and President Maxwell of the Victorian Supreme Court, with the support of the Chief Justices of Australia and New South Wales, to LACC to "review the present Academic requirements in the light of the prevailing practices in Australian law schools, in order to ensure that statutory interpretation is given the prominence and priority which its daily importance to modern legal practice warrants".⁴ In the intervening seven years, LACC has taken several steps to try to assist law schools to enhance the teaching of statutory interpretation. These measures have so far stopped short of reviewing the present Academic Requirements, as originally requested by Chief Justice Warren and President Maxwell. For the reasons set out in item 4 below, LACC now shares the conclusion of the Council of Chief Justices, that such a review is necessary.

A third contextual change occurred with the promulgation in 2010 of Threshold Learning Outcomes (TLOs) for the Bachelor of Laws, developed through the Learning and Teaching Academic Standards Project of the Australian Learning and Teaching Council. They:

represent what a graduate is expected to know, understand and be able to do as a result of learning or, in the words of the Australian Qualifications Framework (AQF), the 'set of knowledge, skills and the application of the knowledge and skills a person has acquired and is able to demonstrate as a result of learning'.⁵

The TLOs reflect the entirely reasonable aspiration that a law student should not only acquire a substantive body of knowledge during a law course (to which the Academic Requirements have so far been primarily directed) but should also acquire the intellectual skills and personal attributes that are necessary to process and deploy that knowledge. For this reason, in addition to specifying particular expectations for Knowledge, the TLOs also set expectations relating to Ethics and Professional Responsibility, Thinking Skills, Research Skills, Communication and Collaboration, and Self-Management.

The particular outcomes posited for Knowledge are:

Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes:

- (a) the fundamental areas of legal knowledge, the Australian legal system, and underlying principles and concepts, including international and comparative contexts,
- (b) the broader contexts within which legal issues arise, and
- (c) the principles and values of justice and of ethical practice in lawyers' roles.

As noted in item 5 below, the phrase "fundamental areas of legal knowledge" in paragraph (a) refers to the substantive areas of knowledge from time-to-time prescribed by the Academic Requirements for admission.

Comparable TLOs for the postgraduate JD degree require graduates to "demonstrate an advanced and integrated understanding of a complex body of knowledge that includes" the same matters required of LLB graduates, plus "contemporary developments in law, and its professional practice." Both these TLOs have been subsequently endorsed by CALD.

⁴ Letter Chief Justice Warren and President Maxwell to SD Clark, Chairman of LACC, 31 August 2007, set out as Attachment B to LACC, *Approaches to Interpretation*, 2009
<<http://www1.lawcouncil.asn.au/LACC/images/pdfs/ApproachestoInterpretationLawSchools.pdf>>.

⁵ Australian Learning and Teaching Council. *Bachelor of Laws Learning and Teaching Academic Standards Statement*, December 2010, 9.
<[http://www.cald.asn.au/assets/lists/Education/LLB%20TLOsKiftetalLTASStandardsStatement2010%20TLOs%20LLB\[2\].pdf](http://www.cald.asn.au/assets/lists/Education/LLB%20TLOsKiftetalLTASStandardsStatement2010%20TLOs%20LLB[2].pdf)>.

A fourth contextual change is that the Productivity Commission, in draft Recommendation 7.1 of its *Draft Report on Access to Justice Arrangements*, suggested that it is now appropriate to review the "ongoing need for the 'Priestley 11' core subjects in law degrees". In its response to that Draft Report⁶, LACC noted that, without significant qualification, the implication that there may no longer be a need to prescribe academic requirements for admission to the legal profession was inconsistent, both with findings of the Australian Law Reform Commission in 2000 and findings of the Attorney-General's International Legal Services Advisory Council in 2013. It was further inconsistent with the Productivity Commission's own advocacy at page 228 for a compulsory core subject which includes training in Alternative Dispute Resolution. Despite LACC's substantial reservations about the accuracy and rigour of the Productivity Commission's Draft Report, its draft recommendation is a further reason to consider whether some sort of review of the 11 Academic Requirements is now timely.

A final contextual change concerns the "globalisation" of legal practice, leading to structural links between law firms in different countries. This, in turn, has seen a developing demand for pre-admission education and training in Australia to keep pace with developments elsewhere, thereby reducing the additional study burdens on Australians seeking subsequent admission in overseas jurisdictions.

Accordingly, it is both prudent and timely to take account of the Legal Education and Training Review (**LETR**) presently underway in England and Wales. In 2011, the Solicitors Regulation Authority, the Bar Standards Board and ILEX Professional Standards (which regulates the activities of the Chartered Institute of Legal Executives) commenced a joint fundamental review of the legal education and training requirements of individuals and entities delivering legal services. In June 2013, LETR released its *Setting Standards* report⁷ containing a wealth of data and analysis which are also very relevant to Australian circumstances. The foreword to that report summarised the current challenge for regulators thus:

the report notes the lack of an overall and coherent legal education system as such. That being so, and in order to avoid a tournament of regulators as to who will regulate whom, the regulators are encouraged to consider greater collaboration ... The report also identifies a number of over-arching issues for the regulators, designed to promote common learning outcomes and consistency.⁸

In view of these changes in context, LACC considers that it is now appropriate to undertake a limited review of the present Academic Requirements, and how they are expressed.

2. **NEED FOR ACADEMIC REQUIREMENTS**

LACC, together with most other commentators, is satisfied that there is a continuing need for certain academic requirements for admission to be specified, for at least five reasons:

- (a) They establish common threshold knowledge, skills and values for intending practitioners. The present Academic Requirements were selected in response to the question:

⁶ LACC, *Submission to Productivity Commission: Draft Report on Access to Justice Arrangements*, 29 April 2014 <http://www1.lawcouncil.asn.au/LACC/images/pdfs/2014_04_29_-_LACC_Submission_to_Productivity_Commission.pdf>.

⁷ LETR, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales*, June 2013 <http://www.lettr.org.uk/the_report>.

⁸ *Ibid* vii.

is the area of such basic potential importance to the great majority of practitioners today that no law graduate should be permitted to practise without it?⁹

In the intervening 40 years, both the range of legal practice and the proportion of lawyers practising primarily in a limited, specialised area of law, rather than in general practice, appear to have increased. For some, these changes challenge both the contemporary relevance of the question underlying the present Academic Requirements and the validity of the choices then made. Nevertheless, the public is entitled to expect a single level of threshold competence across the range of activities reserved for practising lawyers, whether barristers or solicitors, and common core knowledge and skills.¹⁰ One purpose of the Academic Requirements is thus to posit that threshold competence and the common core knowledge and skills.

- (b) Given the sequential nature of academic legal education and practical legal training in Australia, the Academic Requirements also establish common threshold knowledge against which PLT programs are devised and delivered.
- (c) The Academic Requirements also provide common touchstones for the accreditation, monitoring, reviewing and re-accreditation of law courses entrusted with the task of preparing lawyers for admission to the legal profession.
- (d) The Academic Requirements also provide appropriate referents for assessing the qualifications of overseas lawyers seeking admission in Australia. Some 740 applications for such assessment were received in 2013.
- (e) Appropriately-chosen Academic Requirements also will equip Australian legal practitioners with threshold academic knowledge and skills which facilitate their admission in other jurisdictions.

3. WHAT AREAS OF KNOWLEDGE SHOULD BE PRESCRIBED?

The present 11 Academic Requirements are set out as Schedule 1 to the Uniform Admission Rules.¹¹ Typical descriptions (for Criminal Law and Procedure and for Property) are set out in Appendix 1.

In England and Wales, analogous requirements are presently imposed by interaction between general outcome benchmarks for undergraduate law degrees set by the Quality Assurance Agency, and general accreditation criteria specified in a Joint Statement by the Law Society and the General Council of the Bar, that came into effect in September 2002.¹²

The *Foundations of Legal Knowledge*, which a student must study before becoming eligible to proceed to the practical legal training necessary to become either a barrister or solicitor in England or Wales, are specified in the following way:

The key elements and general principles of the following areas of legal study:

- (i) Public Law, including Constitutional Law, Administrative Law and Human Rights;
- (ii) Law of the European Union;

⁹ LACC, above n 2, 5.

¹⁰ See, too, LETR, above n 7, viii.

¹¹ LACC, *Uniform Admission Rules* 2014.
<http://www1.lawcouncil.asn.au/LACC/images/pdfs/Uniform_Admission_Rules_2014_-_June2014.pdf>

¹² See generally LACC, above n 2, 13–16.

- (iii) Criminal Law;
- (iv) Obligations including Contract, Restitution and Tort;
- (v) Property Law; and
- (vi) Equity and the Law of Trusts.

In light of these requirements and the five reasons for retaining academic requirements mentioned in item 2 above, LACC does not invite submissions or debate about the continuing need to include the following areas of knowledge in any future Academic Requirements:

Administrative Law
 Contract
 Criminal Law and Procedure
 Equity
 Federal and State Constitutional Law
 Property
 Torts

There may be some argument about whether Administrative Law should be included in the above list, but the ALRC in its 2000 Report on *Managing Justice* at paragraphs 2.81 and 2.82 thought it perhaps should be included; and it is part of Public Law as envisaged by the *Fundamentals of Legal Knowledge* in England and Wales.

On the other hand, LACC would be interested to receive submissions about whether the following areas of knowledge continue to be fundamental threshold knowledge for all entry-level lawyers:

Civil Procedure
 Company Law
 Evidence
 Ethics and Professional Responsibility.

Some of the changes in context mentioned in item 1 might be relevant in considering the contemporary relevance of these areas of knowledge as *academic* requirements for all entry-level lawyers seeking admission.

(a) *Civil procedure*

Elements of Civil Procedure and Alternative Dispute Resolution are now both included in the compulsory practice area of Civil Litigation Practice¹³ in the *PLT Competency Standards*. All applicants for admission must have demonstrated the specified competencies in these areas before becoming eligible for admission.

Civil Procedure is not included in the English *Foundations of Legal Knowledge*, despite the fact that practitioners in 2012 rated it second only to Legal and Professional Ethics in importance to legal practice.¹⁴ There, intending solicitors must study Civil and Criminal Litigation as part of the 12-month full-time Legal Practice Course. Intending barristers must study Civil Litigation as a separate subject in the 12-month full-time Bar Professional Training Course.

In their 2007 letter, the Chief Justices noted:

¹³ LACC, *PLT Competency Standards for Entry-level Lawyers*, 1 January 2015, 8
 <<http://www1.lawcouncil.asn.au/LACC/images/pdfs/LACCCompetencyStandardsforEntryLevelLawyers-Jan2015.pdf>>.

¹⁴ LETR, above n 7, 34 [Table 2.4].

statutory interpretation may be more significant to today's lawyers in practice, government or business than the existing requirement of Civil Procedure. While it is certainly important for students to have a general familiarity with civil procedure, we consider that the law of statutory interpretation has a far stronger claim to a separate, substantive place in the curriculum.¹⁵

Civil Procedure is not a mandatory academic requirement in England, Wales Scotland or Canada, but is required in India.¹⁶

(b) *Company Law*

Elements of Company Law are now included in the compulsory practice area of Commercial and Corporate Practice¹⁷ in the *PLT Competency Standards*. All applicants for admission must have demonstrated the specified competencies in this area before becoming eligible for admission.

Company Law is not included in the English *Foundations of Legal Knowledge*. There, intending solicitors must study Business Law and Practice as part of the 12-month full-time Legal Practice Course. Intending barristers may choose to study Company Law as one of two optional subjects in the 12-month full-time Bar Professional Training Course. They are, however, not required to do so.

Company Law is not a mandatory academic requirement in England or Wales, but is required in India. In Scotland and Canada, Commercial Law is compulsory.¹⁸

On the other hand, a survey for the LETR indicated that practitioners generally ranked knowledge of Company or Business Law immediately after Contract and Tort, and ahead of Equity, Land Law, Public Law and Criminal Law.¹⁹ Nevertheless, a clear majority of respondents to the LETR Discussion Paper 02/2012 thought that the existing *Foundations of Legal Knowledge* were "about right".²⁰ They did not seek to include Company or Business Law in the *Foundations of Legal Knowledge* (nor, indeed, Legal and Professional Ethics or Procedure, which were both ranked ahead of Contract).

(c) *Evidence*

Elements of Evidence are now included in the compulsory practice area of Civil Litigation Practice and Criminal Law Practice²¹ in the *PLT Competency Standards*. All applicants for admission must have demonstrated the specified competencies in this area before becoming eligible for admission. Further, in certain jurisdictions intending barristers are required to study elements of Evidence in a Bar Readers' course before practising on their own account.

Evidence is not included in the English *Foundations of Legal Knowledge*. There, intending solicitors must study Civil and Criminal Litigation, but not a discrete subject dealing with Evidence, as part of the 12-month full-time Legal Practice Course. Intending barristers are required to study Evidence in the 12-month full-time Bar Professional Training Course.

¹⁵ Warren and Maxwell above n 4, 2.

¹⁶ LETR, above n 7, 142 [Table 4.4].

¹⁷ LACC, above n 13, 9.

¹⁸ LETR, above n 16.

¹⁹ LETR, above n 7, 34 [Table 2.4], 143 [4.99].

²⁰ *Ibid* 143 [4.99].

²¹ LACC, above n 13, 8-9.

Evidence is not a mandatory academic requirement in England, Wales, Scotland, or Canada, but is required in India.²²

(d) *Ethics and Professional Responsibility*

Ethics and Professional Responsibility is also a compulsory subject in the *PLT Competency Standards*.²³ All applicants for admission must have demonstrated the specified competencies in this area before becoming eligible for admission.

Ethics is not included in the English *Foundations of Legal Knowledge*. There, intending solicitors must study separate subjects of Professional Conduct and Accounts, as part of the 12-month full-time Legal Practice Course. Intending barristers are required to study Professional Ethics in the 12-month full-time Bar Professional Training Course.

Ethics is not a mandatory academic requirement in England, Wales, Scotland, or India, but Ethics and Professionalism is required in Canada.²⁴

However, the LETR report notes that, while one of the clearest conclusions to be drawn from the LETR research data is the centrality of professional ethics and legal values to practice in any capacity, the treatment of professional conduct, ethics and "professionalism" is of variable quality. It therefore recommends the enumeration of "appropriate learning outcomes in respect of professional ethics" while acknowledging that the research data does not reveal a consensus to include professional ethics as a discreet element of the *Foundations of Legal Knowledge*, notwithstanding that it was rated as more important than any other area of knowledge by legal practitioners in 2012. The report notes, however, that:

[t]his does not preclude the academic stage from providing an important basis for the study of professional ethics.²⁵

LACC is also aware that there are many other areas of contemporary legal practice jostling for inclusion among future Academic Requirements. It seems likely that the increasing specialisation of legal practice also produces advocates for the centrality of new, particular areas of knowledge to modern legal practice. One reason for LACC's previous reluctance to embark on a review of the Academic Requirements is the difficulty of achieving consensus on the question whether any other areas of knowledge are now of sufficient general importance to be specified in addition to, or in place of, one or more of the present Academic Requirements. It is possible that the debate raised by this question would be exhausting, aggravating to most, and ultimately disappointing to many. It may be for similar reasons that LETR refrained from suggesting that Legal and Professional Ethics and Procedure be added to the *Foundations of Legal Knowledge*, notwithstanding their recent ranking above all other areas of knowledge by legal practitioners.

A further reason for LACC's previous reluctance to review the Academic Requirements is the consequential effect that abandoning any of the existing 11 Academic Requirements might have for sequential PLT courses. They often devise and deliver their programs on the assumption that incoming students will have common threshold knowledge in the presently-prescribed areas.

LACC also remains reluctant to provoke unnecessary anxiety among either academics or the legal profession about possibly impinging further on academic programs in law

²² LETR, above n 16.

²³ LACC, above n 13, 15.

²⁴ LETR, above n 16.

²⁵ LETR, above n 7, 144 [4.104].

schools, or reducing innovation or narrowing the focus of their programs. As the LETR report notes:

It is important to acknowledge that the traditional [practising] professions are now a minority career destination for law graduates, and university law schools also have their own legitimate and distinctive objectives for the degree.²⁶

4. STATUTORY INTERPRETATION

Some jurisdictions formerly prescribed Statutory Interpretation as an academic requirement for admission. Thus, in Victoria, Statutory Interpretation, Case Analysis, Legal Research and Legal Writing were all prescribed in 1979.²⁷ In the evolution of the present Academic Requirements briefly described in item 1, while the McGarvie Committee specified "Legal Process" as a requirement that would embrace such matters, ALEC assumed that each law course would include an "inevitable introductory course" which would sufficiently deal with them.²⁸

In the event, the Academic Requirements also deemed it unnecessary expressly to mention these matters. Although the significance of legislative materials and their interpretation to legal practice has undoubtedly increased since 1980, this has not previously provoked a re-examination of the adequacy or appropriateness of the present Academic Requirements. The 2007 suggestion by Chief Justice Warren and President Maxwell that there should be such a review²⁹ and that Statutory Interpretation should become an Academic Requirement, should be read in that light.

In March 2009, LACC invited CALD, the law schools and other relevant bodies to express their views about the teaching of Statutory Interpretation. It also convened a Working Group, chaired by President Maxwell to produce a Discussion Paper³⁰ which was subsequently widely circulated for comment in June 2009.

CALD expressed the view that, while it saw Statutory Interpretation "as a fundamental element of any pre-admission law degree", few Deans believed that it should become "yet another designated area of legal knowledge." It further noted that "nowhere does it appear to be presently taught as a single dedicated compulsory subject." CALD thought, however, that the debate about Statutory Interpretation might make it opportune to reconsider the Academic Requirements in their present form.³¹ Some 26 other submissions were received in response to the LACC Discussion Paper.

In light of the submissions received, LACC elected to prepare a *Statement on Statutory Interpretation* to assist law schools, rather than propose an additional Academic Requirement for admission. At the suggestion of the Chair of CALD, LACC sought academic assistance to express that *Statement* in terms of "outcome measures" rather than in the traditional "content-based" style of the other Academic Requirements. Thus, instead of just speaking of knowledge, the *Statement* speaks of being able to do things with the underlying knowledge.

²⁶ LETR, above n 7, 144 [4.105].

²⁷ Rules of the Council of Legal Education (Amendment No. 3) 1979 (Vic), inserting rule 20(a)(ii): SR 29/1980.

²⁸ LACC, *Background Paper on Admission Requirements*, 20 October 2010, 1
<http://www1.lawcouncil.asn.au/LACC/images/pdfs/Background_Paper_on_Admission_Requirements-Oct2010.rev2.pdf>.

²⁹ Warren and Maxwell, above n 4 and item 3(a).

³⁰ LACC, *Approaches to Interpretation*, 2009
<<http://www1.lawcouncil.asn.au/LACC/images/pdfs/ApproachesToInterpretationLawSchools.pdf>>.

³¹ Letter W Ford, Chair of CALD to S D Clark, Chairman of LACC, 17 September 2009.

The resulting *Statement* was subsequently endorsed by all Admitting Authorities and is set out in Appendix 2. Law Schools were advised that, although the *Statement on Statutory Interpretation* was not promulgated as a further Academic Requirement, Admitting Authorities would consider a law school's adherence to the *Statement* when accrediting, reviewing or re-accrediting law courses.

In February 2010, LACC asked CALD and the law schools which prepared submissions on its earlier Discussion Paper for their views on:

- (a) whether the relevant knowledge and skills encompassed by the *Statement* are, or could be, imparted by the course structures and pedagogical methods which they advocated in their earlier submissions; and
- (b) how it might be possible to ensure that each law school arranges for its graduates to attain the knowledge and skills set out in the *Statement*, in the absence of them being made an Academic Requirement for admission to the legal profession.³²

Their respective responses were sought before 30 June 2010.

In the absence of clear responses to these questions, in 2013 LACC thought it prudent to enquire once more about how the teaching of Statutory Interpretation might have developed since the matter was first raised by the Chief Justices in 2007. Each Admitting Authority asked questions of each law school in its jurisdiction and LACC considered and compared the responses received from almost all of the then-existing 37 Australian law schools. With the permission of those law schools, their (occasionally edited) responses were subsequently circulated to all other law schools.

After considering the responses received at its June 2013 meeting, LACC concluded that it was not clear that the *Statement on Statutory Interpretation* has had a marked effect on either the structure or the content of the teaching or assessment of statutory interpretation in most law schools.

Accordingly, LACC sought suggestions from law schools and others about what further steps might be taken:

- (a) to enhance resources that will assist law schools to improve both the teaching and the assessment of knowledge and skills relating to statutory interpretation;
- (b) to improve student understanding of the importance of the area to their future professional lives;
- (c) to improve the pool of teachers with appropriate interests and skills effectively to teach and assess statutory interpretation; and
- (d) to induce law schools that may be reluctant to alter their existing approaches to teaching and assessment of statutory interpretation to examine and, where appropriate, to adjust their programs to meet the contemporary skill requirements for properly informed legal service providers.

At its meeting in October 2013, LACC suggested that it might assist law schools to have an authoritative Best Practice Guide to teaching Statutory Interpretation, both as a dedicated subject, and when "embedded" in other substantive subjects. CALD has adopted this suggestion and has commissioned the preparation of such a document, with the aspiration of completing it in early 2015.

³²

Letter S D Clark, Chairman of LACC to W Ford, Chair of CALD, 26 February 2010.

LACC nevertheless remains particularly concerned that the majority of law school responses did not justify the conclusion that law schools either:

- (a) set out to forge the interpretative examples given to students throughout their course into a coherent body of knowledge and skills about statutory interpretation; or
- (b) *effectively assess* whether students have, indeed, acquired a coherent body of knowledge and skills about statutory interpretation which they may immediately deploy with confidence, when they are admitted to the legal profession or are otherwise employed as lawyers.

In the light of these perceived inadequacies and the recent request from the Council of Chief Justices to undertake a limited review of the Academic Requirements, LACC has concluded that it would now be timely to consider whether Statutory Interpretation should become one of the Academic Requirements for admission.

Statutory Interpretation is not a separate element of the English *Foundations of Legal Knowledge*. It is not a mandatory academic requirement in England, Wales or Scotland, but is a requirement in both Canada and India.³³

It is also not a separate component of the Australian *PLT Competency Standards*, although various aspects of each PLT course assume relevant knowledge and skills. LACC has been told that some PLT courses presently find it necessary to conduct "remedial" teaching in the area, to ensure that students possess the necessary knowledge and skills to deal with these aspects of their PLT course. Such supplementary teaching is difficult to accommodate in the tight framework of most PLT courses.

5. HOW ACADEMIC REQUIREMENTS ARE EXPRESSED

The Academic Requirements initially adopted the drafting of the McGarvie Committee Report to the Council of Legal Education: see item 1 above. They simply sought to set out an indicative synopsis of topics for each area of study, resembling the table of contents of text books in current use. The resulting document drew criticism primarily from the then Dean of Macquarie Law School, as being overly prescriptive. In an attempt to forge consensus, LACC's predecessor added an additional, more generic formulation to each area of knowledge, expressed as an alternative prescription.

The result is, at least in some areas like Criminal Law and Procedure, said to be possibly ambiguous. It has been suggested that some Admitting Authorities from time to time have recourse to the first, more prescriptive synopsis when reviewing and re-accrediting a law school. On the other hand, it is suggested that some law schools rely more on the more generic formulation when devising courses to meet the Academic Requirements.

If there is such ambiguity it may possibly lead to unnecessary and unprofitable conflict between a law school and an Admitting Authority.

Apart from the possibility of certain ambiguity, the existing description of each Academic Requirement endeavours to encapsulate a common minimum body of substantive knowledge that all Admitting Authorities consider the public has a right to expect of all those who seek to undertake those activities currently reserved for practising lawyers by our legal system.

In contrast to each of these modes of description the English *Foundations of Legal Knowledge* are prescribed only in the form of stark subject names: see item 3 above. It is

³³

LETR, above n 16.

sometimes suggested that the Australian Academic Requirements, should be less prescriptive, and more like the English *Foundations of Legal Knowledge*. On the other hand it is most important to note that the LETR report calls for "some further, albeit limited, prescription" of the English *Foundations of Legal Knowledge* "akin to the level of content description provided by the 'Priestley 11'".³⁴

In view of this, LACC's preliminary view is that the Academic Requirements should continue to be expressed in a way that encapsulates the minimum substantive content of what the TLOs refer to as "the fundamental areas of legal knowledge".

The TLOs note that the "fundamental areas of legal knowledge" of which graduates must demonstrate an understanding, "encompass the current 'prescribed areas of legal knowledge' known as the 'Priestley 11'".³⁵ Again:

[t]he accepted 'fundamental areas of legal knowledge are those from time to time prescribed by the relevant Australian law admitting authorities'.³⁶

There is no suggestion that the "fundamental areas of legal knowledge" also need to be re-drafted and expressed in terms of "outcomes."

On the other hand, there is an underlying question whether the Academic Requirements should, in future, continue to be confined to statements about fundamental areas of legal knowledge. Having regard to the wider aspirations of the TLOs also to take account of the intellectual skills and personal attributes necessary successfully to deploy fundamental areas of legal knowledge, should the Academic Requirements in future also deal with such matters?

However the Academic Requirements are expressed, there may still be a need to support those requirements with additional standards or guidelines.

This is to:

- (a) ensure that the core knowledge and skills developed by law schools are uniformly achieved across all teaching institutions;
- (b) remove potential barriers to flexibility and mobility between branches of the profession and internationally, by providing transparent and explicit indicia of the minimum knowledge and skills demonstrated by all Australian law students upon graduation; and
- (c) increase access to professional opportunities, by giving employers confidence that graduates from every Australian law school will have demonstrated comparable minimum knowledge and skills upon graduation.³⁷

In England, at present, additional material elaborating the *Foundations of Legal Knowledge* is set out in complex and potentially confusing detail in general outcome benchmarks of the Quality Assurance Agency and a Joint Statement by the Law Society and the General Council of the Bar that came into effect in September 2002³⁸

³⁴ LETR, above n 7, 144 [4.103].

³⁵ Above n 5, 15.

³⁶ *Ibid.* Further, "[t]he rules of statutory interpretation are examples of fundamental areas of legal knowledge."

³⁷ Compare LETR, above n 7, 143 [4.102].

³⁸ The relevant provisions are respectively set out in LACC, above n 2, 13-16.

The implications and apparent overlap between these documents were carefully considered in the Roper Report³⁹ which led to the CALD *Standards for Australian Law Schools*. Unsurprisingly, the LETR report called for the present standards to be clarified and simplified.⁴⁰

In Australia, there are presently no regulatory guidelines or standards to supplement the Academic Requirements, which might help to achieve the objectives in paragraphs (a)–(c) above.

(a) *CALD Standards and TLOs*

The CALD *Standards for Australian Law Schools*⁴¹ provide some general, relevant guidelines but are not mandatory nor are they regulatory in intent. Similarly, the TLOs are insufficient to achieve these objectives, although uniform adherence to both the CALD *Standards* and the TLOs would help produce common attributes among entry-level lawyers.

While CALD has endorsed the TLOs and they are embraced by the CALD *Standards*, as the CALD framework is neither regulatory nor mandatory, it may be insufficiently robust to supplant the need for external regulation.

This raises the question whether the Academic Requirements should in some way incorporate, or take account of, the present TLOs for the LLB and JD. LACC has previously investigated one way of integrating the two,⁴² but abandoned the project as one Admitting Authority considered that the form of the TLOs might, from time-to-time, be too readily influenced by Commonwealth Government policy.

(b) *Consistency of Standards*

One of the persistent concerns of the Council of Chief Justices, LACC and Admitting Authorities is how best to ensure consistency in:

- (i) levels of attainment of applicants for admission, in view of the great diversity of providers, of the qualifications they offer, of the manner of teaching and of modes of assessment;
- (ii) the breadth and depth of law subjects studied during a law course, whether or not they are among the Academic Requirements;
- (iii) standards and comparability of equivalent qualifications offered by different institutions;
- (iv) student assessment and the rigour underlying those assessments.

Nothing in the present Academic Requirements responds to these concerns, which increase as the number of law schools expands and they diversify their offerings.

It is important to note that positing a single level of knowledge or competence does not preclude different ways of acquiring that knowledge or competence, or that any

³⁹ Roper, C, *Standards for Australian Law Schools*, 2008, 19-29.

⁴⁰ LETR, above n 7, 143 [4.100].

⁴¹ CALD, *Standards for Australian Law Schools*, 17 November 2009. <<http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf>>

⁴² LACC, *Rethinking Academic Requirements and Threshold Learning Outcomes* 24 June 2011. <<http://www1.lawcouncil.asn.au/LACC/images/pdfs/Re-thinkingAcademicRequirementsforAdmission.pdf>>

qualification may not exceed the threshold. It does, however, mean that different approaches must have at least an equivalent effect.⁴³

In LACC's preliminary view, it appears likely that the Academic Requirements in Australia should in future be supplemented by regulatory statements which:

- (a) take appropriate account of the TLOs, as they presently exist; and
- (b) attempt to resolve some or all of the problems of consistency of standards referred to above.

6. SOME QUESTIONS

In light of the preceding discussion, LACC invites submissions relating to the following questions.

- 6.1 Should any or all of the following areas of knowledge be omitted from the Academic Requirements:

Civil Procedure
Company Law
Evidence
Ethics and Professional Responsibility?

- 6.2 If so, why?

- 6.3 Should Statutory Interpretation be included as an Academic Requirement?

- 6.4 Is any other area of knowledge, not presently included in the Academic Requirements, now of such basic potential importance to the great majority of practitioners today, that no law graduate should be permitted to practise without it?

- 6.5 If so, should any such area be added to the Academic Requirements?

- 6.6 Should the drafting technique used in the Academic Requirements be amended in any way?

- 6.7 If so, how?

- 6.8 In the light of the development of the TLOs, should the Academic Requirements be altered or supplemented also to take account of intellectual skills and personal attributes necessary to process and deploy the areas of knowledge prescribed by the Academic Requirements in legal practice?

- 6.9 How might the Academic Requirements be altered or supplemented to resolve some or all of the problems of consistency of standards referred to above; and, in particular,

- 6.10 How might the Academic Requirements be altered or supplemented to ensure that appropriate and consistent assessment regimes exist to certify that each successful student has demonstrated the common required knowledge and skills in each Academic Requirement to a common minimum standard?

7. SUBMISSIONS

Submissions on any or all of the questions set out in item 6 are invited by no later than **31 March 2015**. Submissions should be in Word format, marked *Review of Academic*

⁴³ LETR, above n 7, xiii.

Requirements, clearly identify the particular questions to which the submission responds, and sent to:

frances.mcmurray@lawcouncil.asn.au

All submissions received will be published on the LACC website.

APPENDIX 1

Criminal Law and Procedure

1. The definition of crime.
2. Elements of crime.
3. Aims of the criminal law.
4. Homicide and defences.
5. Non-fatal offences against the person and defences.
6. Offences against property.
7. General doctrines.
8. Selected topics chosen from:
 - attempts
 - participation in crime
 - drunkenness
 - mistake
 - strict responsibility
9. Elements of criminal procedure.
 - Selected topics chosen from:
 - classification of offences
 - process to compel appearance
 - bail
 - preliminary examination
 - trial of indictable offences

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topics should provide knowledge of the general doctrines of the criminal law and, in particular, examine of both offences against the person and against property. Selected treatment should also be given to various defences and to elements of criminal procedure.

Property

1. Meaning and purposes of the concept of property.

2. Possession, seisin and title.
3. Nature and type (ie. fragmentation) of proprietary interests.
4. Creation and enforceability of proprietary interests.
5. Legal and equitable remedies.
6. Statutory scheme of registration.
7. Acquisition and disposal of proprietary interests.
8. Concurrent ownership.
9. Proprietary interests in land owned by another.
10. Mortgages.

OR

Topics of such breadth and depth as to satisfy the following guidelines.

The topic should provide knowledge of the nature and type of various proprietary interests in chattels and land, and the creation and relative enforceability at law and in equity. Statutory schemes of registration for both general law land and Torrens land should be included. A variety of other topics might be included, eg, fixtures, concurrent interests and more detailed treatment of such matters as sale of land, leases, mortgages, easements, restrictive covenants, etc.

APPENDIX 2

STATEMENT ON STATUTORY INTERPRETATION

1. **Locating and using legislation**

A law graduate should be able to locate, and make appropriate use of, the text of a legislative provision relevant to a legal problem.

2. **Aids to interpretation**

A law graduate should be familiar with, and be able to make appropriate use of, the various aids to statutory interpretation authorized by law, including:

- (a) the intrinsic guides to interpretation offered by the text of the relevant legislation;
- (b) the principles and presumptions employed by the courts;
- (c) the common law and statutory regimes governing recourse to extrinsic materials as potential aids to interpretation;
- (d) the relevant Commonwealth, State or Territory Interpretation Act;
- (e) other contextual factors authorized by the law.

3. **Deploying interpretative techniques**

A law graduate should be able to deploy, where appropriate, a range of techniques in the course of solving an interpretative problem. In addition to deploying substantive interpretative factors, the techniques include:

- (a) determining whether a legislative provision is open to more than one construction;
- (b) identifying and articulating alternative constructions, where a provision is reasonably open to more than one construction;
- (c) resolving competing alternative constructions;
- (d) identifying how a suggested construction may be accommodated in a manner consistent with the existing text of a legislative provision (for example, whether it is to be by judicial gloss or by an implication);
- (e) reaching a considered view on the legal meaning, or likely legal meaning, of a doubtful legislative provision.

4. **Special interpretative issues**

A law graduate should be familiar with, and be able to handle adequately, problems raising special interpretative issues, including:

- (a) determining whether the exercise of a statutory power is invalid if a condition or procedure regulating its exercise, is breached;
- (b) determining whether a law has a retrospective operation;
- (c) determining whether a statutory offence contains a mental ingredient to be proved by the prosecution (*mens rea*); and, if so, what that ingredient is;

- (d) determining the scope of a statutory power to make delegated legislation in the light of delegated legislation which has purportedly been made under that power.
- (e) the application of a rule of interpretation in any applicable charter of human rights.

5. **Written advice**

A law graduate should be able to give a reasoned opinion as to the appropriate meaning of a legislative provision which takes adequate account of the law of statutory interpretation.